

2013

Maine Tax Practitioner Institute. 2013

Maine Board of Tax Appeals

Maine Department of Administrative and Financial Services

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MAINE TAX PRACTITIONER INSTITUTE 2013





MAINE BOARD OF TAX APPEALS

207-287-2864

108 Sewall Street, Augusta, Maine

134 State House Station, Augusta, ME 04333

www.maine.gov/boardoftaxappeals

Paul L. Bourget Appeals Officer

207-287-2862

paul.bourget@maine.gov

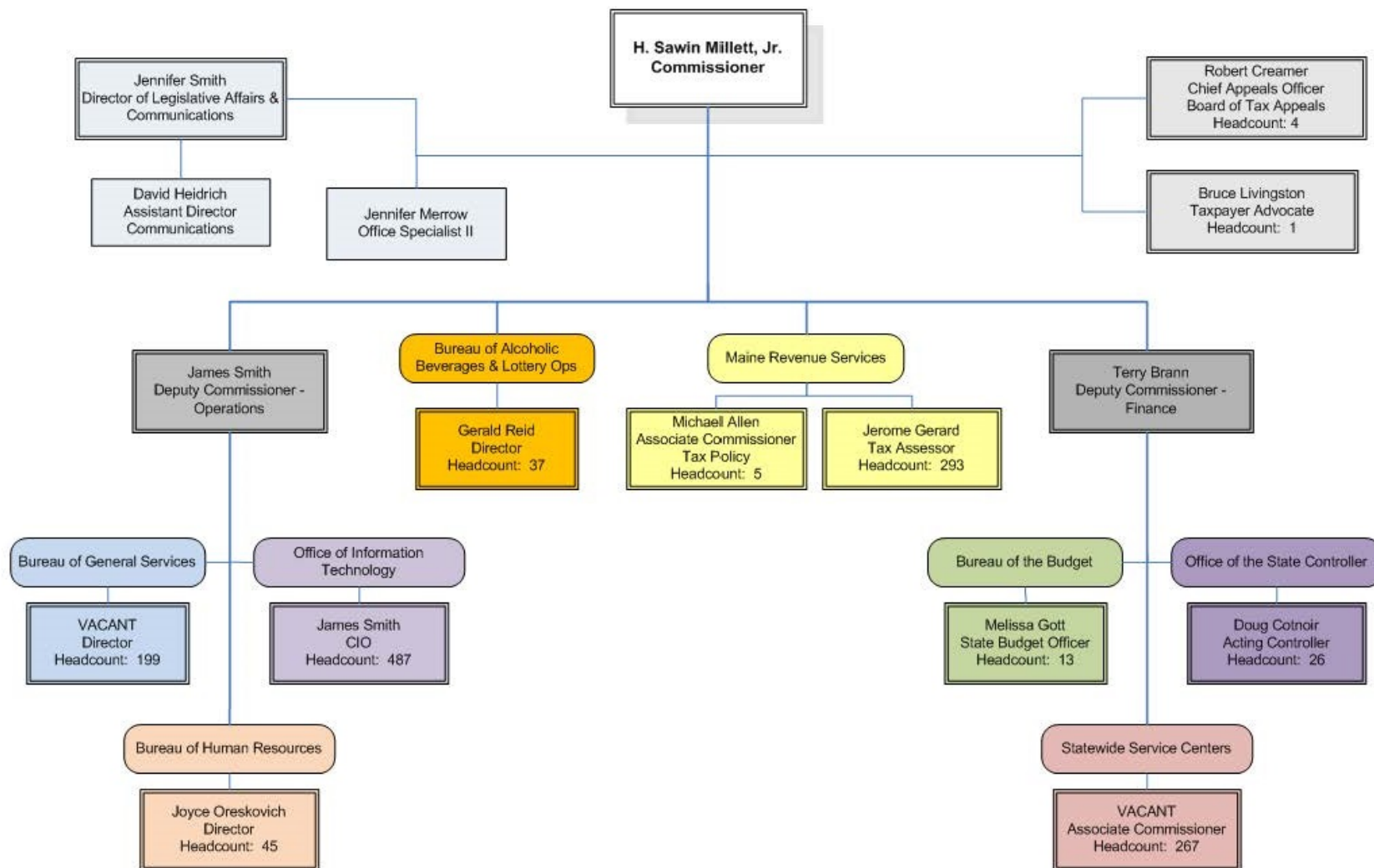
The Board commenced
operations on
July 1, 2012.

36 M.R.S. § 151-D

Organization

Department of Administrative and Financial Services

September 1, 2013



“The purpose of the board is to provide taxpayers with a fair system of resolving controversies with the bureau and to ensure due process.”

36 M.R.S. § 151-D(1)

“[T]he board shall adopt rules
 . . . to ensure the speedy,
 efficient, just and inexpensive
 disposition of all proceedings
 under this section.”

36 M.R.S. § 151-D(10)

Who can represent taxpayers
before the Board?

You.



Effective April 22, 2013

Accountants, enrolled agents, and “other persons” may represent taxpayers appealing a reconsidered decision to the Board.

4 M.R.S.A. § 807(3)(R)

36 M.R.S. § 151-A(2)

Who is the Maine Board of
Tax Appeals?

Board Members

- William J. Kelleher, Chair



- Hon. Richard Nass



- Edwin A. Heisler



Appeals Office

- Located at 108 Sewall Street in Augusta
- Supports the Members of the Board
 - holds hearings, evaluates evidence and prepares recommended decisions for the Board to consider.



What issues can be
appealed to the Board?

Assessments or other tax
determinations if the
amount in controversy is
\$1,000 or more.

Maine Revenue Services' Action

Tax assessments, refund denials,
and other determinations made
by Maine Revenue Services may
be appealed . . .

Maine Revenue
Services' Action



Maine Revenue
Services'
Reconsideration
Decision

. . . but only after Maine Revenue Services has been given an opportunity to reconsider the assessment or denial.

Issues on Reconsideration
may include:

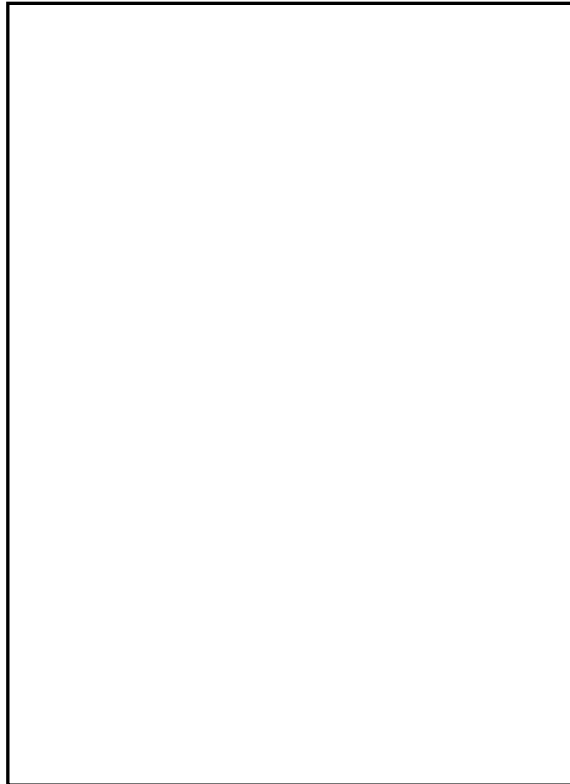
Understatement of Tax

Form	1040	Department of the Treasury U.S.
Label (See instructions on page 14.) Error Use the IRS label.	L A B E L H	For the Your f If a joi Home

Underpayment of Amount Stated on a Return



Failure to File a Return



E.g., a Domicile Issue

Denial of Refund



Timeliness



Effective April 22, 2013

The minimum amount that
may be appealed to the Board
is set at \$1,000.

36 M.R.S.A. § 151(2)(E)

The \$1,000 minimum amount
is **the original amount on
reconsideration with MRS,**
without regard to any
reduction through the
reconsideration process.

The \$1,000 minimum amount
**includes all tax, interest, and
penalties in controversy**

at the time that
reconsideration is requested
by the Taxpayer.

Reconsideration of an Assessment or Determination by Maine Revenue Services



A person who is subject to an assessment may request reconsideration by Maine Revenue Services within 60 days after receipt of notice.

36 M.R.S.A. § 151(1)

Within 90 days of receipt of the petition for reconsideration, Maine Revenue Services shall approve or deny, in whole or in part, the relief requested.

36 M.R.S.A. § 151(2)(B)

Settlement negotiations are
permitted.



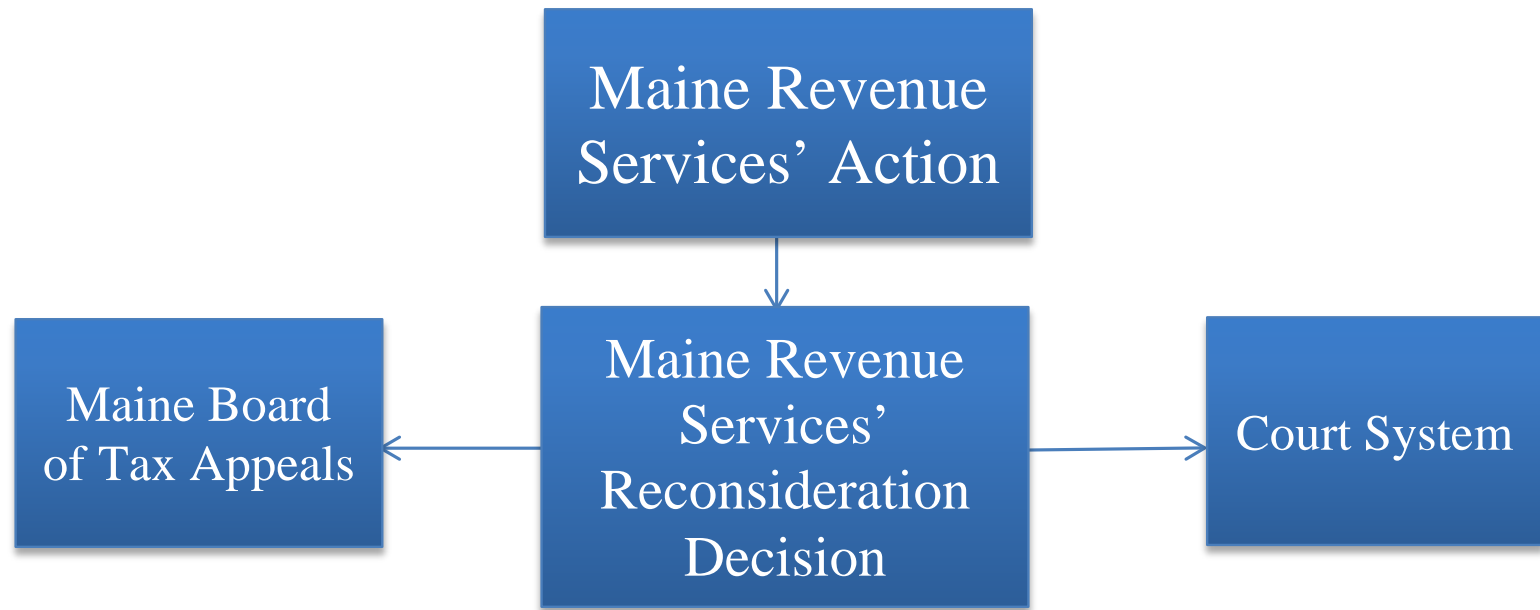
36 M.R.S.A. § 151(2)(B)

Once commenced, the 90 day reconsideration period may be extended for good cause.

36 M.R.S.A. § 151(2)(B)

At the conclusion of the reconsideration process, Maine Revenue Services will issue its reconsidered decision.





The Taxpayer may appeal a reconsidered decision to the Maine Board of Tax Appeals or to the Superior Court.

Such appeals are *de novo*,
which means that the Board or
the court will make their own
determinations on all issues of
fact and law.

36 M.R.S.A. § 151(2)(G)

Filing an Appeal with the Board
requires only a simple, informal
statement of appeal.



Proceedings before the Board
and its Appeals Office are
informal in nature.

Whenever possible, procedural
and other matters are handled
by email and telephone.

There is no filing fee for an appeal to the Maine Board of Tax Appeals, although there is a \$100 processing fee if an in-person Appeals Conference is desired.

The filing fee in Superior Court is \$150.

At an Appeals Conference, the Taxpayer and Maine Revenue Services may:

- Present any arguments concerning the appeal;
- Have witnesses and experts testify on their behalf;
- Further explain the evidence they have submitted.

Effective October 9, 2013.

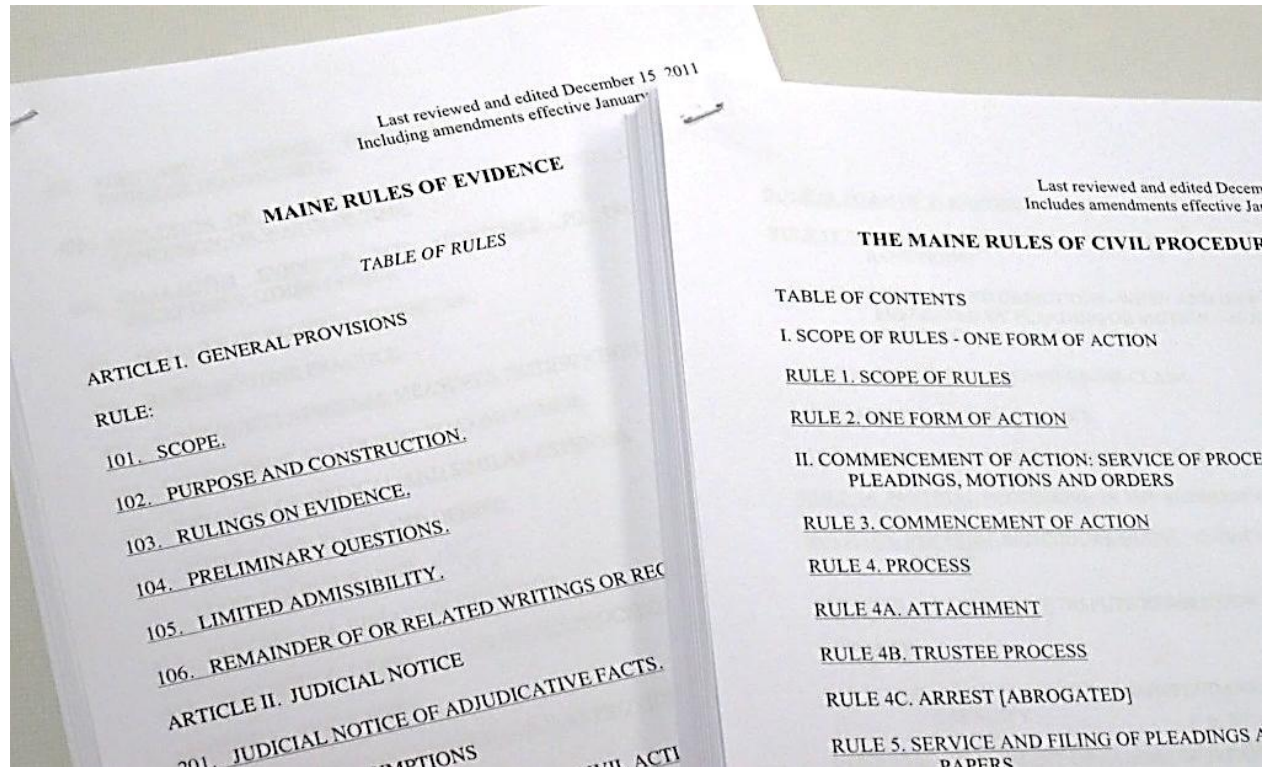
An Appeals Conference may be requested within 20 days of filing a statement of appeal.

36 M.R.S.A. § 151-D(10)(A)

If no conference is requested,
the appeal will be decided on the
basis of the written submissions.



Whether or not a conference is requested, both the Taxpayer and Maine Revenue Services may submit affidavits or unsworn statements of witnesses.



Neither the court rules nor the rules of evidence apply to Board proceedings.

18-674

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

MAINE BOARD OF TAX APPEALS

Chapter 100: MAINE BOARD OF TAX APPEALS PRACTICE AND PROCEDURE

SUMMARY: This Chapter establishes rules of practice and procedure before the Maine Board of Tax Appeals as required by 36 M.R.S. §151-D.

PART 1. GENERAL PROVISIONS

Section 101. Purpose and Scope

The purpose of these Rules is to set out efficient and effective procedures by which the Maine Board of Tax Appeals shall fulfill its purpose, as described in 36 M.R.S. §151-D(1), of providing Taxpayers with a fair system of resolving controversies with Maine Revenue Services, and to ensure that Taxpayers receive due process. This Chapter shall govern all practice and procedure before the Board under the applicable laws of the State of Maine, unless otherwise provided by the Board.

Rather, Board procedure is contained in its simplified rule.

CONFIDENTIAL

Proceedings before the Board and its Appeals Office are confidential and not open to the public, unlike proceedings in Superior Court.

The Mechanics



The Appeals Officer prepares a
Recommended Decision,
summarizing the evidence and
the relevant law for the Board's
consideration.

The Recommended Decision will contain:

- A clear statement of the matter that is the subject of the appeal
- The date of the conference (if any) and the participants
- A listing of all evidence upon which the decision is based
- Findings of fact
- A clear statement of result resolving all issues under consideration
- An explanation of the reasoning behind the decision

- The Recommended Decision will be shared with the parties prior to delivery to the Board
- The parties will be able to submit written comments on the Recommended Decision to the Appeals Officer
- The Appeals Officer may modify the Recommended Decision based on the comments
- The parties will receive copies of the final version of the Recommended Decision when it is presented to the Board

- The parties' comments will be submitted to the Board at the same time as the Recommended Decision
- The parties are also permitted to submit written statements to the Board in support of their positions
- Either party may also request the opportunity to address the Board orally prior to the Board deciding the appeal

Potential Board Decisions

- Uphold the Recommended Decision
- Modify the Recommended Decision
- Send the case back to the Appeals Officer for the taking of additional evidence or further consideration of the issues
- Reject the Recommended Decision and decide the case for itself based on the record

Once the Board issues its decision,
either party may request
reconsideration, but only if:

- (1) relevant new evidence exists that was previously unknown to a party or, if known by the party, could not be obtained by that party prior to the issuance of the Board's decision; or
- (2) reconsideration is necessary in order to correct a procedural error, factual error, or error of law

Once a decision has been issued,
either party has the right to a *de
novo* appeal to the Superior
Court.

36 M.R.S.A. § 151-D(10)(I)

An appeal to Superior Court
must be taken “within 60 days
after receipt of the Board’s
decision.”

36 M.R.S.A. § 151-D(10)(I)

Why appeal to the Board?



- When there is not enough money in controversy for an appeal to Superior Court, but the taxpayer wants an independent review
- Even when there is a substantial amount of money involved, the Board's independent review may avoid the need to go to court and incur additional expenses
- Another chance to work with MRS to possibly settle

Why appeal to the Board?

- Appeals are usually decided in about four to six months,
 - *Much more quickly than in Superior Court*
- A taxpayer need not be represented by an attorney
- Proceedings before the Board are closed to the public, unlike Superior Court

A fair system for resolving differences
with Maine Revenue Services, and
ensuring due process.

